

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JUL - 2 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Request for Review by Progressive)	CC Docket No. 02-6
Communications Inc. of Decision of Universal)	CC Docket No. 96-45
Service Administrator)	
)	
Billed Entity: Dodge County School)	
District)	
Billed Entity No.: 127428)	
Form 471 App. Nos.: 607806, 607887)	

REQUEST FOR REVIEW BY PROGRESSIVE COMMUNICATIONS INC. OF
UNIVERSAL SERVICE ADMINISTRATOR

Thomas Navin
Matthew L. Gibson
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

*Counsel for Progressive Communications
Inc.*

July 2, 2009

No. of Copies rec'd. 0 + 4
List: ABCDE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	ARGUMENT	4
	A. Because the December 2007 Email Was Not an RFP, the School District Complied with § 54.504(b)(4).	5
	B. If the December 2007 Email Is Deemed an RFP, Waiver of the 28 Day Rule is Appropriate.	6
IV.	REQUEST FOR RELIEF	9

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review by Progressive)	CC Docket No. 02-6
Communications Inc. of Decision of Universal)	CC Docket No. 96-45
Service Administrator)	
)	
Billed Entity: Dodge County School)	
District)	
Billed Entity No.: 127428)	
Form 471 App. Nos.: 607806, 607887)	

**REQUEST FOR REVIEW BY PROGRESSIVE COMMUNICATIONS INC. OF
UNIVERSAL SERVICE ADMINISTRATOR**

I. INTRODUCTION

Progressive Communications Inc. (“Progressive”) appeals the May 14, 2009 decision of the Universal Service Administrative Company (“USAC” or “Administrator”) to rescind the commitment for Schools and Libraries Program (“SLP”) funding to the Dodge County School District (the “School District”) for Funding Year 2008.¹ Although the School District’s request for discounted services was subject to *bona fide* competitive bidding, the Administrator rescinded the School District’s funding for a concocted technical violation of Commission Rule 54.504(b)(4)(the “28 Day Rule”). The School District’s alleged actions did not give rise to unfair bidding practices, and the Administrator’s decision only serves to squelch the SLP’s underlying purpose of supporting poor schools and libraries with access to discounted telecommunications and information services. Accordingly, Progressive urges the Bureau to reverse the

¹ See 47 C.F.R. §§ 54.719(c), 54.721, 54.722; Appendix A (“Commitment Adjustment Letters”).

Administrator's rigid application of the 28 Day Rule and reinstate the funds awarded to the School District for Funding Year 2008.

In addition, Progressive respectfully requests the Bureau to expedite its review of the Administrator's decision. Such a request is proper here: Progressive has already partially performed under its contract with the School District, and the School District is ill-equipped to absorb the financial burden created by the denial of more than \$1.8 million in SLP funds.

II. BACKGROUND

In November 2007, the School District decided to seek SLP funds for the first time. Despite its unfamiliarity with the complex application process, the School District prepared both a Form 470 and a draft request for proposal ("RFP"). Because the draft RFP largely duplicated the information contained in the Form 470, the School District ultimately chose not to release it and indicated as much in its Form 470.² The School District has repeatedly asserted, and Progressive agrees, that the November 27, 2007 Form 470 provided sufficient information for vendors to prepare meaningful bids for the qualified services the School District sought (the "Services"). Indeed, three vendors responded to the November 27, 2007 Form 470 posting: Progressive, MetroPower, Inc., d/b/a MetroServices, and Linux Solutions Providers, Inc.³

After the School District's Form 470 was posted to the Administrator's website, several vendors asked the School District to provide additional information about the Services. In response to these requests by interested service providers, on December 18, 2007, the School District used a copy of the draft RFP in its December 18, 2007 email

² See Appendix B.

³ Progressive submitted its proposal on January 3, 2008, and MetroServices and Linux Solutions Providers both submitted their proposals on January 4, 2008.

(the “December 2007 Email”) to better inform the nine interested service providers.⁴ The draft RFP, which bore the same November 27, 2007 date as the School District’s Form 470, set a January 4, 2008 deadline for the submission of proposals.

In October 2008, Progressive noticed that it was not receiving payments for invoices submitted to the School District. After the School District contacted USAC to determine the reason for the delay in the processing of payments, members of USAC’s Schools and Libraries Division (“SLD”) informed the School District that its funding was frozen, pending an investigation of its bidding practices.⁵ In a December 1, 2008 letter to SLD staff, the School District explained that, despite the mistaken release of the December 2007 Email, the participating service providers had sufficient time and information to bid on the Services.⁶ The School District’s assurances did not mollify the SLD staff, and, on January 9, 2009, SLD issued a formal inquiry to the School District.⁷ The School District promptly responded to the Letter of Inquiry.⁸

On May 14, 2009, the Administrator released the Commitment Adjustment Notice, in which it found that the School District failed to comply with the Commission’s competitive bidding rules.⁹ Specifically, the Administrator noted that the School District failed to make available the December 2007 Email for the required twenty-eight days.¹⁰

⁴ See Appendix C.

⁵ While the Letter of Inquiry, discussed below, briefly mentions an allegation that the School District did not provide site access to an interested party, USAC has not provided notice of any complaints implicating the timing of the School District’s selection of Progressive. Moreover, the timing of the site access complaint is curious and ultimately undermines any claim that the School District engaged in an unfair bidding process. If the School District’s process was truly unfair, Progressive would have expected that the complainant would have stepped forward to blow the whistle closer to point at which the School District selected Progressive. Instead, it appears that the site access complainant waited to blow the whistle until *after* Progressive began work under its contract with the School District.

⁶ See Appendix D.

⁷ See Appendix E (“Letter of Inquiry”).

⁸ See Appendix F.

⁹ See Appendix A.

¹⁰ See 47 C.F.R. § 54.504(b)(4).

In making this decision, the Administrator focused on the period between the release of the December 2007 Email and that document's bid deadline (December 18, 2007 and January 4, 2008, respectively). Using these two dates the Administrator found that the School District shortchanged its 28 Day Rule obligations by eleven days. Based on this finding, the Administrator rescinded the School District's Funding Year 2008 commitments, which totaled more than \$1.8 million.

III. ARGUMENT

In assessing compliance with its E-rate program rules, the Commission faces the difficult task of balancing the need for fair bidding practices with the public's interest in the distribution of funds to eligible entities, such as the School District. Thus, the Commission and the Bureau have recognized that, in certain circumstances, the public is ill-served by "rigid adherence to certain E-rate requirements that are 'procedural' in nature."¹¹

In a time when industrial stalwarts are declaring bankruptcy and the federal government is spending billions of dollars to stimulate the economy, holding the School District to account for minor procedural infraction makes little sense. This point is further underscored by the Administrator's recurring inability to distribute all SLP funds allocated for a given Funding Year. Indeed, last June, the Commission announced that "\$600 million in unused funds will be carried forward from Funding Years 2002, 2003 and 2004 to increase disbursements to schools and libraries in Funding Year 2008 in

¹¹ *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools, Albert Lea, MN, et al.*, File No. SLD-517274, *et al.*, CC Docket No. 02-6, Order, DA-09-825, at 5-6 (WCB April 14, 2009) ("*Albert Lea Area Schools*"); see also *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, File No. SLD-487170, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320-21, paras. 10-11 (2006).

excess of the annual cap.”¹² The Administrator’s decision not only scuttles the School District’s hopes to enhance its educational programs through the use of new technology, but it also cancels the injection of nearly two million dollars into a local economy.

Progressive recognizes that rules, such as the 28 Day Rule, safeguard the competitive bidding process’ ability to prevent waste, fraud, and abuse. Yet, the Commitment Adjustment Notice stands as a clear example of how the Administrator’s rigid application can gut the rules’ spirit. The School District – a first-time SLP applicant – decided to take additional steps to obtain the best possible proposals. Even though the School District acted in an equitable manner, the Administrator rescinded the School District’s funding. The Administrator’s decision plainly contradicts existing Commission and Bureau precedent.¹³ The School District’s minor procedural error should not bar it from receiving SLP funds.

A. Because the December 2007 Email Was Not an RFP, the School District Complied with § 54.504(b)(4).

In rescinding the School District’s funding commitments, the Administrator appears to have impliedly rejected the School District’s assertion that the December 2007 Email was not a formal RFP.¹⁴ This implied finding ignores established Bureau policy regarding Section 54.504 compliance, and it ignores the absence of any harm to the parties, the public, or the competitive bidding process.

In cases where an applicant released an RFP after indicating in its Form 470 that it would not, the Commission has looked beyond strict procedural compliance and

¹² See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-06, *Carryover of Unused Federal Universal Service Funds for Funding Year 2008*, DA 08-1470 (rel. June 23, 2008).

¹³ See generally, *Albert Lea Area Schools; Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al.*, File Nos. SLD-297249, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (“*Aberdeen School District*”).

¹⁴ See Appendices D and F.

instead has assessed whether the applicant's overall conduct undermined the competitive bidding process. In such cases, the Commission has examined two factors: (a) whether the Form 470 contained "enough detail for service providers to identify the desired services and to formulate bids" and (b) whether "all interested bidders also had access to whatever additional information [an applicant] provided in . . . auxiliary documents."¹⁵

Although the Commitment Adjustment Letter focuses on the School District's compliance with the 28 Day Rule instead of the contradictory release of an RFP, the underlying principals are the same. The School District's Form 470 contained sufficient information to allow service providers to formulate bids for the Services. In addition, the December 2007 Email was circulated on the same day to nine service providers, including the three that would ultimately submit proposals to the School District. No service provider was given preferential treatment; thus, all participated on the same, level playing field. Accordingly, Progressive submits that the Administrator should have treated the December 2007 Email as an "auxiliary document" rather than an RFP and should have looked to the Form 470 to assess the School District's compliance with the 28 Day Rule. Had the Administrator done so, it would have quickly seen that the School District's Form 470 was available for forty-five days.

B. If the December 2007 Email Is Deemed an RFP, Waiver of the 28 Day Rule is Appropriate.

Even if the Bureau determines that the December 2007 Email should be treated as an RFP, the Bureau should still reverse the Administrator's decision for two reasons: (a) the Commitment Adjustment Notice is premised on flawed interpretation of the 28 Day

¹⁵ *Requests for Review of Decisions of Universal Service Administrator by Approach Learning and Assessment Centers, Santa Ana, CA, et al.*, File Nos. SLD-506121, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510, 15513-14 (WCB Oct. 30, 2008) ("*Approach Learning*").

Rule, and (b) the present circumstances are sufficiently consonant with established precedent to justify waiver of the 28 Day Rule.

If the December 2007 Email was truly an RFP, the twenty-eight day waiting period would have started on December 18, 2007, and the School District should not have selected a service provider until January 15, 2008. The Administrator, however, stopped the clock on January 4, 2008 (the December 2007 Email's submission deadline).

According to the Administrator, the School District violated the 28 Day Rule because the December 2007 Email was only available for seventeen days before bids were due. The Administrator's analysis is inconsistent with a plain reading of the 28 Day Rule and, moreover, leads to absurd results.

The 28 Day Rule speaks in terms of "making commitments," not in terms of receiving proposals.¹⁶ Specifically, the rule requires applicants to "wait at least four weeks [*i.e.*, twenty-eight days] from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services."¹⁷ It follows that an applicant's decision to set a bidding deadline cannot reasonably be construed as a "commitment" to a particular service provider, especially where multiple bids are timely submitted.¹⁸ Applying the Administrator's logic would mean that even if the School District signed a contract sixty days after the release of its December 2007 Email, the Administrator *still* would have rescinded funding based on a perceived violation of the 28 Day Rule. Such an approach utterly frustrates the goals of Section 254 of the Communications Act.

¹⁶ See, e.g., *Albert Lea Area Schools*, at n. 39 (disregarding an RFP's bid submission date and instead assessing compliance based on the filing date of the Form 470).

¹⁷ 47 C.F.R. § 54.504(b)(4).

¹⁸ Indeed, in explaining the application process, the Bureau has paired the term "commitments" with "agreements with selected service providers." See, e.g., *Approach Learning* at para. 4.

If the December 2007 Email was truly an RFP *and* if the Administrator had used the correct end date for the 28 Day Rule analysis, the Administrator would have seen that the December 2007 Email was available for twenty-four days – not the seventeen days discussed in the Commitment Adjustment Notice. While this represents a one-day expansion beyond the Bureau’s previous waivers of the 28 Day Rule,¹⁹ waiver is still appropriate in light of the particular circumstances at issue in this case.

The Bureau has only granted waiver of the 28 Day Rule where there is a demonstrable lack of waste, fraud, or abuse in the bidding process.²⁰ Such is the case here. Following an investigation of the School District’s contracting process,²¹ the Administrator could only point to a possible technical violation of the 28 Day Rule as justification of its decision to rescinding the SLP funds awarded to the School District. No bids were submitted to the School District between its selection of Progressive on January 11, 2008 and the end of the twenty-eight day waiting period on January 15, 2008;²² thus, no service provider was harmed by the School District’s failure to consider its proposal. Further, the presence of three competing bids ensured that the School District would not waste E-rate funding by paying more than the commercially available price for the Services. Finally, neither the School District nor Progressive received any benefit from the decision to enter into a contract on January 11, 2008 instead of January 15, 2008.

The particular circumstances surrounding the Commitment Adjustment Notice

¹⁹ In its recent *Albert Lea Area Schools* decision, the Bureau granted waiver of the 28 Day Rule to applicants that signed contracts as early as twenty-five days after posting of a Form 470 to the Administrator’s website. *See Albert Lea Area Schools*, paras 7-10.

²⁰ *See, e.g., id.*

²¹ *See* Appendices E and F.

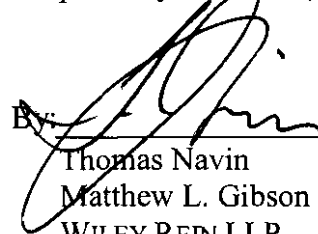
²² *See* Declaration of Dr. Darrell May.

justify this waiver request's slight departure from precedent.²³ The *Albert Lea Area Schools* waivers were granted where funding applicants selected service providers between twenty-five and twenty-seven days after posting a Form 470. Here, however, the School District's Form 470 was available for forty-five days, and its December 2007 Email was available for twenty-four days.²⁴ If the Bureau treats the December 2007 Email as an RFP, Progressive submits that the long tenure of the School District's Form 470, when coupled with a lack of harm to the competitive bidding process, should compel the Bureau to grant a waiver of the strict adherence to the 28 Day Rule in this matter.

IV. REQUEST FOR RELIEF

For the foregoing reasons, Progressive respectfully requests that the Bureau reverse the Administrator's decision to rescind the funds awarded to the School District for Funding Year 2008.

Respectfully submitted,


By: _____

Thomas Navin
Matthew L. Gibson
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

*Counsel for Progressive Communications
Inc.*

Dated: July 2, 2009

²³ As noted above, the Bureau has granted up to a three day waiver of the 28 Day Rule, but Progressive is seeking a four day waiver.

²⁴ As discussed above, the School District's Form 470 contained sufficient information such that interested service providers could prepare proposals independent of the December 2007 Email.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

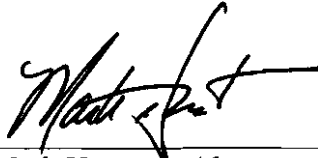
In the Matter of)	
)	
Request for Review by Progressive)	CC Docket No. 02-6
Communications Inc. of Decision of)	CC Docket No. 96-45
Universal Service Administrator)	
)	
)	
)	

DECLARATION OF MARK HURT

I, Mark Hurt, do hereby under penalty of perjury declare and state as follows:

1. I am President of Progressive Communications Inc.
2. In accordance with Commission rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual assertions set forth in the foregoing Request for Review by Progressive Communications Inc., of Decision of Universal Service Administrator and hereby certify that they are true and correct to the best of my knowledge.

Dated: June 29, 2009



Mark Hurt, President
Progressive Communications, Inc.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

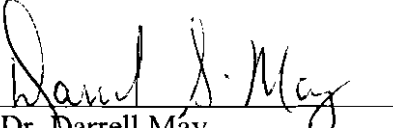
In the Matter of)	
)	
Request for Review by Progressive)	CC Docket No. 02-6
Communications Inc. of Decision of)	CC Docket No. 96-45
Universal Service Administrator)	
)	
)	
)	

DECLARATION OF DR. DARRELL MAY

I, Darrell May, do hereby under penalty of perjury declare and state as follows:

1. I am Superintendent of Dodge County Schools (the "School District").
2. I have received and reviewed the January 9, 2009 letter from Cindy Deodato (the "Letter") of the Schools and Libraries Division of the Universal Service Administrative Company. The Letter requested, among other things, that the School District provide information regarding an allegation that, prior to selecting a vendor to provide services requested in its November 27, 2007 FCC Form 470, the School District (a) denied an interested party's request for a site walk-through and (b) failed to respond to an interested party's request for additional information regarding the School District's Form 470.
3. After consulting with School District employees and reviewing the School District's records, I hereby reaffirm that the School District did not deny any interested parties' requests for either a site walk-through or additional information regarding the services requested in the School District's November 27, 2007 FCC Form 470.

Dated: 6/30/09



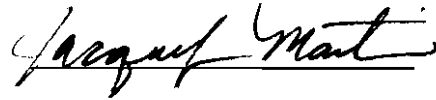
Dr. Darrell May
Superintendent of Dodge County Schools

CERTIFICATE OF SERVICE

I, Jacquelyn Martin, hereby certify that on this 2nd day of July 2009, I caused copies of the foregoing "Request for Review by Progressive Communications Inc. of Decision of Universal Service Administrator" in CC Docket No. 02-6 and CC Docket No. 96-45 be mailed via first-class postage prepaid mail to the following:

Letter of Appeal
Schools and Libraries Division - Correspondence
Unit
100 S. Jefferson Rd
P.O. Box 902
Whippany, NJ 07981

Dodge County School District
Attn: Darrell May
P.O. Box 1029
Eastman, GA 31023

A handwritten signature in cursive script that reads "Jacquelyn Martin". The signature is written in black ink and is positioned above the printed name.

Jacquelyn Martin



Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2008: July 1, 2008 - June 30, 2009

May 14, 2009

Debbie Skipper

DODGE COUNTY SCHOOL DISTRICT

720 COLLEGE ST

EASTMAN, GA 31023

Re: Form 471 Application Number: 607806
Funding Year: 2008
Applicant's Form Identifier: DOD2008#4
Billed Entity Number: 127428
FCC Registration Number: 0006435747
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Service Provider Contact Person: Serina McCoy

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the

- Billed Entity Name,
- Form 471 Application Number,
- Billed Entity Number, and
- FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Serina McCoy
Progressive Communications Inc.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 607806**

Funding Request Number: 1674685
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Contract Number: E2008-BM
Billing Account Number: N/A
Site Identifier: 127428
Original Funding Commitment: \$81,000.00
Commitment Adjustment Amount: \$81,000.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY2008 FCC Form 470, Application #129310000642099, Item #21, you certify that you will post your Form 470 and (if applicable) make your RFP available for at least 28 days before considering all bids received and selecting a service provider. During the course of review, it was determined that you sent the RFP on 12/18/2007 and bids were due on 1/4/2008. RFP was thus available for only 17 days. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to make your RFP available for at least 28 days before considering all bids received and selecting a service provider, you violated the competitive bidding process. Accordingly, your funding commitment of \$81,000 will be rescinded in full, and USAC will seek recovery of any disbursed funds from the applicant.



Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2008: July 1, 2008 - June 30, 2009

May 14, 2009

Debbie Skipper
DODGE COUNTY SCHOOL DISTRICT
720 COLLEGE ST
EASTMAN, GA 31023

Re: Form 471 Application Number: 607887
Funding Year: 2008
Applicant's Form Identifier: DOD2008#5
Billed Entity Number: 127428
FCC Registration Number: 0006435747
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Service Provider Contact Person: Serina McCoy

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the

- Billed Entity Name,
- Form 471 Application Number,
- Billed Entity Number, and
- FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Funding Commitment Adjustment Report for
Form 471 Application Number: 607887

Funding Request Number: 1674810
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Contract Number: Y2008-CE
Billing Account Number: N/A
Site Identifier: 127428
Original Funding Commitment: \$1,043,057.66
Commitment Adjustment Amount: \$1,043,057.66
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY2008 FCC Form 470, Application #129310000642099, Item #21, you certify that you will post your Form 470 and (if applicable) make your RFP available for at least 28 days before considering all bids received and selecting a service provider. During the course of review, it was determined that you sent the RFP on 12/18/2007 and bids were due on 1/4/2008. RFP was thus available for only 17 days. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to make your RFP available for at least 28 days before considering all bids received and selecting a service provider, you violated the competitive bidding process. Accordingly, your funding commitment of \$1,043,057.66 will be rescinded in full, and USAC will seek recovery of any disbursed funds from the applicant.

Funding Request Number: 1674882
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Contract Number: E2008-S
Billing Account Number: N/A
Site Identifier: 127428
Original Funding Commitment: \$169,999.20
Commitment Adjustment Amount: \$169,999.20
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY2008 FCC Form 470, Application #129310000642099, Item #21, you certify that you will post your Form 470 and (if applicable) make your RFP available for at least 28 days before considering all bids received and selecting a service provider. During the course of review, it was determined that you sent the RFP on 12/18/2007 and bids were due on 1/4/2008. RFP was thus available for only 17 days. The FCC rules require that the applicant submits a "bona fide" request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to make your RFP available for at least 28 days before considering all bids received and selecting a service provider, you violated the competitive bidding process. Accordingly, your funding commitment of \$169,999.20 will be rescinded in full, and USAC will seek recovery of any disbursed funds from the applicant.

Funding Request Number: 1674916
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143020237
Service Provider Name: Progressive Communications Inc.
Contract Number: E2008-WLAN
Billing Account Number: N/A
Site Identifier: 127428
Original Funding Commitment: \$214,007.40
Commitment Adjustment Amount: \$214,007.40
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY2008 FCC Form 470, Application #129310000642099, Item #21, you certify that you will post your Form 470 and (if applicable) make your RFP available for at least 28 days before considering all bids received and selecting a service provider. During the course of review, it was determined that you sent the RFP on 12/18/2007 and bids were due on 1/4/2008. RFP was thus available for only 17 days. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to make your RFP available for at least 28 days before considering all bids received and selecting a service provider, you violated the competitive bidding process. Accordingly, your funding commitment of \$214,007.40 will be rescinded in full, and USAC will seek recovery of any disbursed funds from the applicant.